

SAFE Act Frequently Asked Questions

Who is covered under the NCUA's SAFE Act regulation?

All credit unions (both federally and non-federally insured) and their employees who are mortgage loan originators (MLOs) making residential mortgage loans. These include:

- First mortgages
- Second mortgages
- Home Equity Lines of Credit (HELOCs)
- Refinanced loans
- Reverse mortgages
- Land purchased for the construction of a residence

Non-federally insured credit unions (NFICUs) will only be allowed to register under the federal system if NCUA has a specific Memorandum of Understanding for the SAFE Act with the applicable state regulatory authority. Otherwise, the state-licensing system will apply.

Who is an MLO?

Under the SAFE Act regulation, an MLO is an individual who both:

1. *Takes a residential mortgage loan application; and*
2. *Offers or negotiates terms of a residential mortgage loan for compensation or gain.*

The term MLO does not include:

- An individual who performs only administrative or clerical tasks;
- Certain individuals who perform real estate brokerage activities (as described in the SAFE Act and regulation); or
- Individuals who are involved in the extension of credit related solely to time share plans.

Appendix A lists some of the specific duties MLOs typically perform in the course of originating mortgage loans. NCUA is providing this information to assist credit union staff in identifying employees who are MLOs.

According to the Appendix, if an individual is authorized to negotiate terms, discuss and counsel about available options, and provide and explain legally required disclosures, the individual is fulfilling MLO duties. If an individual is merely receiving calls and referring the caller to a loan officer who will actually accept the application, or is making telephone calls to obtain information necessary for loan processing or underwriting, without engaging in a discussion of available rates or terms, the individual is not an MLO.

What are the SAFE Act regulation requirements?

The SAFE Act regulation prescribes specific duties for both credit unions and individual MLOs.

Credit unions must:

1. Develop policies and procedures.

All credit unions originating any residential mortgage loans also will have to adopt, and employees will have to follow, written policies and procedures designed to ensure compliance with the rule. This includes credit unions that currently have MLOs who fall under the de minimus exception.

These policies and procedures will be required by October 1, 2010. Section 761.104 outlines specific items that must be addressed.

2. Ensure MLOs are properly registered and prohibit any employee who is not registered from performing MLO duties.
3. Ensure information is updated in the Registry when certain events occur including a change in the MLO's name or employment status (i.e. separation/termination), etc.
4. Provide other information to the Registry as outlined in Section 761.103(d)(3)(e)(1)(i). This includes basic information regarding the credit union (name address, etc.) and authorized Registry users. Credit unions have 30 days to update this information should it become inaccurate or outdated. This information must be renewed annually.

MLOs must:

1. Provide basic information [outlined in Section 761.103(d)(1)] to the Registry or ensure that the credit union is performing this function.
2. Obtain a unique MLO identifier (which cannot be used for any other purpose) from the Registry.
3. Maintain a current registration as long as MLO duties are being performed (annual renewal dates will be from November 1 to December 31 of each year).
4. Make certain that the Registry is updated if certain events occur (name change, information becomes outdated, etc.).
5. Authorize the Registry to obtain information related to certain legal administrative actions.
6. Attest to the accuracy of all information provided to the Registry whether submitted by the MLO or the credit union.
7. Authorize the Registry to make certain information available to the public.

Are there any exceptions?

The regulation has a “de minimus” exception. Registration requirements do not apply to any employee of a credit union who has never been registered or licensed through the Registry as an MLO if during the past 12 months the employee acted as an MLO for five or fewer residential mortgage loans.

Are the training and licensing requirements the same as under the state registration system?

No. Unlike under the state licensing system, under the federal registration system the SAFE Act does not impose any licensing or continuing education requirements.

What about volunteers who perform MLO duties?

Credit union employees, including volunteers, who originate more than five residential mortgage loans in the prior 12 months (i.e., those who fall outside the “de minimus” exception) will have to register with the Registry to obtain a unique identifier and maintain the registration for as long as they perform MLO duties. These volunteers must also follow all other requirements set forth for MLOs under the regulation.

For those credit unions that have a volunteer credit committee, at least one individual from the committee will be required to register under the system and obtain a unique identifier and maintain the registration. This individual will be considered an MLO and must follow all other requirements set forth for MLOs under the regulation. Again, the de minimus exception applies.

What about CUSO employees?

The law treats employees of depository institution subsidiaries the same as employees of the depository institution, if the subsidiary is owned by the depository institution and regulated by a federal banking agency. In the case of CUSOs, however, NCUA does not have direct regulatory oversight or enforcement authority.

NCUA has not, historically, asserted that CUSOs or their employees are exempt from applicable state licensing regimes and the SAFE Mortgage Licensing Act does not alter that approach. Individuals employed by CUSOs that engage in loan origination activities, whether the CUSO is owned by a state or a federal credit union, would need to be licensed in accordance with applicable state requirements.

What information must credit unions and staff provide to the Registry?

The MLO or employing credit union must submit the information required in section 761.103 (d)(1) to the Registry. This includes fingerprints of the employee for a criminal history background check. Details on how the fingerprints should be gathered and transmitted to the Registry will be forthcoming from the Registry.

When will the Registry be available for registration?

We anticipate that the Registry will be available for online registration in early 2011. Once NCUA has provided public notice that the registry is available, credit unions will have 180 days from that date to ensure that MLOs register and receive their unique identifier.

We encourage you to begin gathering the data that will be required for the registration process to ease the potential burden of this task.

We expect the details on the mechanics of registration to be forthcoming from the Registry and anticipate that these instructions will answer many of your questions about the actual process of registering your MLOs including how to process fingerprints, etc.

What fees will be assessed?

The SAFE Act addresses fees as follows:

SEC. 1510. FEES. *The [Agencies], the [HUD] Secretary, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.*

The Agencies are contracting with the State Regulatory Registry LLC (SRR) to administer the Registry and establish the related fee structure. As such, the SRR will be determining the nature and amount of any federal registration fees and will assess depository institutions in connection with SAFE Act federal registration. The Agencies themselves, including NCUA, do not anticipate assessing any SAFE Act federal registration fees from their regulated entities.

The Conference of State Bank Supervisors (CSBS) has indicated there will be an opportunity for the public to comment on the fees, and any future adjustments to such fees, before their imposition on federal registrants and their employing institutions. We anticipate SRR will announce the fee structure prior to the Registry's availability for online registration. NCUA will strive to ensure those fees are reasonable.

What are the important dates?

October 1, 2010 – All credit unions that originate any mortgage loans must have written policies and procedures that address the requirements of the SAFE Act.

2011 – All credit unions must have their MLOs identified and registered within 180 days of the date NCUA provides public notification that the registry is open.